

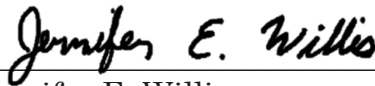
GERSTEIN HARROW LLP

The Honorable Jennifer E. Willis
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Via CM/ECF

Re: Letter Motion For An Interim Discovery Stay, Configure Partners LLC v. RACI Holdings LLC, 22-CV-8631-RA

DENIED as moot. This motion is rendered moot by the order at Dkt. No. 53. The Clerk of the Court is respectfully requested to close the motion at Dkt. No. 50. SO ORDERED.



Jennifer E. Willis
United States Magistrate Judge
May 12, 2023

Dear Judge Willis,

My firm represents Plaintiffs Configure Partners LLC and Configure Partners Securities LLC (together “Configure”) in this case. I write pursuant to Local Rule 37.2 and this Court’s individual rules and practices to request that this Court schedule a conference to issue an interim stay of discovery served by Defendant RACI Holdings LLC until after this Court resolves Configure’s pending motion to stay discovery. We have conferred with RACI by phone (on February 22nd) and email (several times in late February), and RACI does not consent to any of Configure’s requested relief. Instead, RACI has said that it “will continue to oppose any efforts to delay discovery in this action.”

On January 6, 2023, Configure filed a motion to stay discovery in this matter pending resolution of a contemporaneously filed motion for summary judgment. (ECF No. 42.) On February 15, 2023, that motion was referred to Your Honor. (ECF No. 46.) The thrust of Configure’s argument to stay discovery is that the case should be resolved as a matter of law on clear facts already in the record and so discovery would be useless and wasteful. RACI disagrees and has filed a motion pursuant to Rule 56(d) to conduct discovery before responding to the motion for summary judgment. (ECF No. 44.) RACI also opposes Configure’s motion to stay discovery pending resolution of the summary judgment motion (ECF No. 45), and, as mentioned, also opposes this letter motion’s request for an interim stay of discovery pending resolution of the stay motion itself. In the meantime, RACI has served discovery on both Configure and a non-party, with responses to written discovery ostensibly due on March 16, 2023 and depositions currently noticed for March 21, 2023 and April 5, 2023.

Even assuming RACI is right that summary judgment should not issue before discovery and that discovery should not be stayed while the Court considers Configure’s motion for summary judgment (though RACI is wrong on both counts), Configure here asks only that the Court stay discovery while it considers Configure’s motion *to stay discovery*. Forcing Configure to respond to discovery or appear at out-of-town depositions during the pendency of such a motion is—as the parties discussed with Judge Abrams at her initial Rule 16 conference—self-defeating. When would

GERSTEIN HARROW LLP

RACI's opposition end? Must we file *another* letter motion to stay discovery while the Court considers this letter motion to stay discovery? Of course not. RACI has articulated no prejudice it will suffer while this Court considers our motion to stay discovery, and so RACI should at least be prevented from imposing needless costs on Configure while this Court considers that motion. *Cf. Doe v. Trump*, 944 F.3d 1222, 1223 (9th Cir. 2019) ("A temporary stay . . . is only intended to preserve the status quo until the substantive motion for a stay . . . can be considered.")

Accordingly, this Court should protect Configure (and non-party S&T Bank) from the imminent costs and other burdens of discovery by granting an interim stay of discovery pending the resolution of Configure's original motion to stay discovery. In the alternative, this Court could style the same relief as a temporary protective order.

Sincerely,

/s/ Charlie Gerstein

Charlie Gerstein

February 28, 2023